

HW

2157



Appl. No. 10/009,397
Reply to Office Action of September 21, 2006

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
RESPONSE TO RESTRICTION REQUIREMENT
ELECTION OF CLAIMS

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APPLICANT:	Andreas Hofstetter	DOCKET NO:	P01,0402
SERIAL NO.:	10/009,397	ART UNIT:	2157
FILED:	February 25, 2002	EXAMINER:	Burgess, Barbara N.
CONF. NO.	2404		
TITLE:	NETWORK, INTERPRETER FOR SUCH A NETWORK, AND METHOD FOR OPERATING A NETWORK		

Commissioner for Patents
PO Box 1450
Alexandria, VA 22313-1450

10 Dear Sir:

This communication is in response to the Office Action ("OA") on the above-identified case mailed September 21, 2006, requiring a further restriction. Applicant notes that an original restriction requirement between Group I claims (1-8 and 16-20) and Group II claims (9-15) was made in the Office Action of March 22, 2005, to which the Applicant responded by electing the Group I claims, with traverse, on the basis that a search would not be unduly burdensome to the Examiner.

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The Examiner withdrew the restriction requirement in the Office Action of May 25, 2005, and issued two actions on the merits. In an office action mailed May 19, 2006, the Examiner reinstated the restriction requirement between Group I claims (1-8 and 16-20) and Group II claims (9-15). Applicant responded by electing the Group I claims without traverse. The Examiner then sent the OA to which this election is responsive requiring a further restriction to Group I(A) claims (1-8), and Group I(B) claims (16-20) (A & B designations provided by Applicant), as outlined in the table below:

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Group I(A)	claims 1-8	network for the interconnection of computers comprising a client computer, a server
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computer configured to store datafiles, an interpreter in [the] server, a logical or physical system, a gateway installed at the server and integrated in interpreter, classified in class 709, subclasses 203, 219.

Group I(B) claims 16-20 method for operating a network for the interconnection of computers having a server and client comprising storing datafiles by the server, calling datafiles by the client, transmitting datafiles by the server, inquiring by the client for a specific service, determining by queried server whether it can perform the requested service, and performing the service if it can, and if it cannot, switching the client to a server that can execute the service, classified in class 718, subclass 102.

Applicant provisionally elects the claims in Group I(B) (claims 16-20), with traverse.

5 Applicant recognizes the necessity of restriction practice at the U.S. Patent Office and appreciates situations in which an application can impose a serious search burden on the Examiner. Applicant also recognizes the limited resources that the U.S. Patent Office can allocate to any given application.

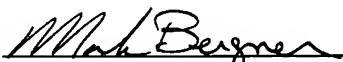
10 However, in the present situation, having given the application two substantive actions on the merits after having withdrawn the restriction requirement, and then reimposing the original restriction and reasserting a further restriction requirement is not proper. Applicant does appreciate that the original restriction was withdrawn and that the Examiner was willing to consider all of the claims initially. But Applicant has devoted considerable time, effort, and money of his own in addressing

the claims that were reinstated, and furthermore has made arguments with respect to art of record (that could possibly harmfully narrow the claim scope) that would not have been present in the file history had these claims not been considered by the Examiner.

5 Although it is true that MPEP §811.03 permits a reintroduction of a restriction if restriction becomes proper at a later stage in the prosecution, Applicant also further notes, as indicated in MPEP §818.01 that the election becomes fixed when the claims in an application have received an action on their merits by the Office. In the present application, the restriction has not "become proper" since no
10 amendments to the claims have been made and no actions have been taken on the part of Applicant that would now make the restriction "become proper" in light of the previous withdrawal by the Examiner.

For these reasons Applicant traverses not only the present further restriction requirement between the Group I(A) and Group I(B) claims, but further withdraws the
15 non-traversal of the previous election between Group I and Group II claims, and hereby traverses this election on the same grounds.

Respectfully submitted,

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CERTIFICATE OF MAILING

30 I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail in an envelope addressed to:
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